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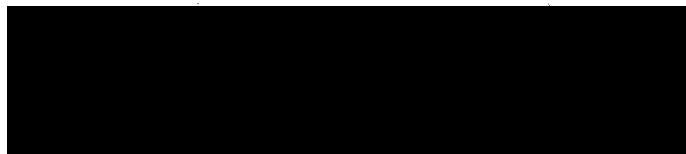
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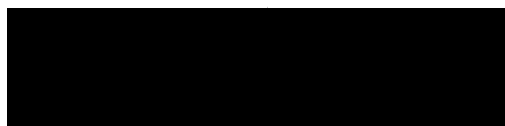


U.S. Citizenship  
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Services



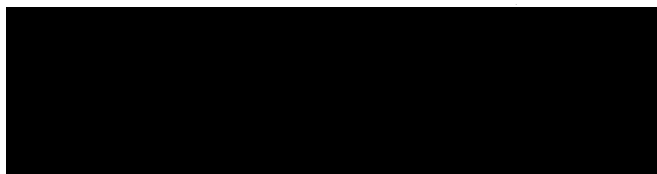
FILE: WAC 02 112 54409 Office: CALIFORNIA SERVICE CENTER Date: APR 28 2004

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
the office that originally decided your case. Any further inquiry must be made to that office.

*Mari Johnson*

for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director to treat the appeal as a motion.

The petitioner is a mortgage banking company. It seeks to employ the beneficiary as a human resource specialist, and endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the ground that the offered position did not qualify as a specialty occupation.

An affected party has 30 days from the date of an adverse decision to file an appeal. 8 C.F.R. § 103.3(a)(2)(i). If the adverse decision was served by mail, an additional three days is added to the proscribed period. 8 C.F.R. § 103.5a(b). The record reflects that the director sent his decision of October 24, 2002, to the petitioner, and petitioner's counsel, at their addresses of record. The appeal was received by Citizenship and Immigration Services (CIS) 34 days later on November 27, 2002. Therefore, the appeal was untimely filed.

An appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). If, however, an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5 (a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5 (a)(3).

On appeal, counsel submits a brief setting forth the basis of the appeal. Counsel's brief satisfies the requirements of a motion. Therefore, the petition will be remanded to the director to treat the appeal as a motion. The director may request any additional evidence deemed necessary to assist him with the determination.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The petition is remanded to the director for entry of a new decision.